



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: AUGUST 31, 2022

IN THE MATTER OF:

Appeal Board No. 624958 A

PRESENT: GERALDINE A. REILLY, MEMBER

The claimant applied to the Appeal Board pursuant to Labor Law §534 for a reopening and reconsideration of its decision filed April 15, 2022 (Appeal Board No. 620289), which dismissed the claimant's appeal as inadvertently processed, and continued in effect the decision of the Administrative Law Judge sustaining the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits on the basis that the claimant did not meet any of the criteria listed in sections 2102(a)(3)(A)(ii)(I) of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) of 2020.

Upon due deliberation on the application, the Board has reopened and reconsidered its decision.

Now, based on all of the foregoing and on the entire record, the Board makes the following

**FINDINGS OF FACT:** The claimant applied for Pandemic Unemployment Assistance (PUA) benefits in late 2020. Prior to filing his PUA application, the claimant last worked in September of 2018 at a warehouse. The claimant did not work after that employment ended in 2018, did not work at all in 2019, and did not work in 2020 before applying for benefits.

The claimant had discussions with "CR" about starting to work sometime in June 2020, but no start date was set, and no salary was discussed or offered. The claimant did not start working in 2020, since all plans were stopped due to

the pandemic.

OPINION: The credible evidence fails to establish that the claimant meets any of the qualifying conditions in the CARES Act to be eligible to receive Pandemic Unemployment Assistance benefits.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act § 2102 (h)

provides the following:

#### RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE AND DISASTER

UNEMPLOYMENT ASSISTANCE.-Except as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if- (1) the term "COVID-19 public health emergency" were substituted for the term "major disaster" each place it appears in such section 625; and (2) the term "pandemic" were substituted for the term "disaster" each place it appears in such section 625.

Using the relevant substitution, the regulations at 20 CFR § 625.5 (c) provide

in pertinent part: For the purposes of paragraphs (a) (1) and (b) (1) of this section, a worker's or self-employed individual's unemployment is a direct result of the COVID-19 public health emergency where the unemployment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster.

The Board has explicitly held that under the relevant statute and regulations, to be eligible for Pandemic Unemployment Assistance, a claimant must, in the first instance, have become unemployed as a direct result of the COVID-19 public health emergency, before even considering whether the claimant's inability to work is due to COVID-19. See, Appeal Board Nos. 618195, 614822, and 613271.

The credible evidence establishes that this claimant last worked in 2018; therefore, he became unemployed for reasons wholly unrelated to the COVID-19 public health emergency, and does not qualify to receive PUA benefits under the provisions of the CARES Act.

Further, even crediting the claimant's testimony that he had discussions with "CR" about starting to work sometime in June 2020, the claimant had no scheduled start date and there had been no salary offered, so any discussion regarding potential work was not a firm offer of employment. The relevant qualifying factor of section 2102(a)(3)(A)(ii)(I) of the CARES Act provides that the claimant was scheduled to start work but did not have a job due to COVID-19. Since the claimant testified that there was no scheduled start date, his circumstances do not fit into this category.

Accordingly, we conclude that the claimant is not eligible to receive Pandemic Unemployment Assistance.

DECISION: The decision of the Appeal Board is rescinded.

The decision of the Administrative Law Judge is affirmed.

The initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits on the basis that the claimant did not meet any of the criteria listed in sections 2102(a)(3)(A)(ii)(I) of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) of 2020, is sustained.

The claimant is denied benefits with respect to the issues decided herein.  
(Al reclamante se le niegan beneficios con respecto a los temas decididos en el presente.)

GERALDINE A. REILLY, MEMBER